

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

PLI
Melody

30490

FILE: B-215480

DATE: February 21, 1985

MATTER OF: Lightning Location and Protection, Inc.

DIGEST:

1. Protest objecting to the provisions of a solicitation is untimely when not filed before the date set for receipt of initial proposals.
2. Protester has not met its burden of affirmatively proving that a solicitation was biased in favor of the awardee due to actions by an agency employee when the only support for this contention is that the employee later was hired by awardee.

Lightning Location and Protection, Inc. protests the award of a contract for lightning position and tracking systems (LPTS) to Atlantic Scientific Corporation under request for proposals (RFP) No. N00163-84-R-0359, issued by the Naval Avionics Center, Indianapolis, Indiana. The protester contends that the RFP was defective for a number of reasons, that the agency improperly rejected a lower-cost alternative proposal submitted by the protester, and that the procurement was tainted by a conflict of interest because of the participation of an agency employee who subsequently went to work for the awardee. We dismiss the protest in part and deny it in part.

The solicitation was for the purchase and installation of two LPTS, Atlantic Scientific Corporation model TOA-1 or equal. The purpose of a LPTS is to detect the occurrence of and predict the potential for lightning storms over a broad geographic area. This information can be used in determining whether to take precautionary measures such as the cessation of aircraft refueling operations. The solicitation listed the salient characteristics of the brand name system that an offered "equal" system would be required to possess.

031278

The agency received two responses to the RFP. Atlantic Scientific offered to supply and install two brand name systems for a total of \$149,958. The protester offered alternative proposals. Under one proposal, the agency would purchase from the protester for a total of \$176,900 two complete systems that the agency says met the salient characteristics contained in the solicitation. As an alternative, the protester offered to supply only some of the required equipment; the agency then would arrange to acquire data from an existing system operated by the State University of New York at Albany. The agency reports that it considered the protester's alternative proposal but rejected it because funds for such an arrangement were not available and because of concerns over maintenance and the possible impact on the agency's plans to expand the geographic coverage of the systems. The agency awarded the contract to Atlantic Scientific based on the firm's lower price for Navy-owned systems.

The protester contends that the RFP was unduly restrictive because the brand name or equal purchase description was written to exclude all but the awardee's equipment, and was further defective because it failed to require such features as the ability to distinguish individual lightning flashes or to feed data to a central location. The protester objects to the rejection of its allegedly lower-cost alternative proposal and says that the agency is wasting money in purchasing lightning location systems when it simply could lease access to existing systems. Finally, the protester contends that since the purchase description was drafted by an agency employee who subsequently went to work for Atlantic Scientific, a conflict of interest taints the entire procurement and requires cancellation of the award.

The agency argues that, except for the conflict of interest issue, all of the protester's contentions are untimely. We agree.

Under our Bid Protest Procedures, 4 C.F.R. § 21.1(b)(1) (1984), protests based on alleged improprieties apparent on the face of a solicitation must be filed before the closing date for the receipt of initial proposals. In this case, the protester's contentions regarding the content of the purchase description are

clearly allegations involving apparent solicitation defects. Further, the protester's objection to the rejection of its alternative proposal essentially questions the agency's decision to buy complete lightning location systems rather than meet its needs by other means, a decision that also was reflected in the RFP. Since this protest was not filed until June 7, 1984, well after the March 19 closing date for receipt of proposals, these grounds of the protest are untimely and will not be considered. TM Systems, Inc., B-214303, Aug. 14, 1984, 84-2 CPD ¶ 174.

The protester acknowledges that it could have raised many of its allegations in a timely manner, but argues that a conflict of interest so tainted this procurement that we should waive our timeliness rules. We do not agree with this argument, however, since, as discussed below, the protester's conflict of interest allegation is without merit. Moreover, the possible existence of a conflict of interest is significant here only to the extent that it may have resulted in a purchase description with requirements exceeding the government's minimum needs. In this connection, the protester has not specified a single requirement in the purchase description that it believes exceeds the minimum needs of the government.

According to the agency, an equipment specialist for the Naval Oceanography Command was responsible for drafting a recommended list of requirements for lightning position and tracking systems. This individual reportedly resigned from the agency in April 1983, and is believed to have taken a job with Atlantic Scientific approximately 2 months later. The equipment specialist was not involved, says the agency, in drafting the purchase description contained in the solicitation. Rather, in May 1983, the employee's recommendations were transmitted to the Naval Avionics Center which drafted the purchase description--admittedly based in part on the employee's recommendations--and conducted the actual procurement, issuing a solicitation in January 1984.

The essence of the protester's conflict of interest allegation is that the equipment specialist improperly tailored his list of requirements to favor the product

of his future employer. The protester also suggests that, after leaving the government, the employee may have assisted Atlantic Scientific in the preparation of its proposal.

Our review of the protester's contentions is limited to determining whether the equipment specialist, either before or after he left the government, improperly exerted prejudice or bias on behalf of the awardee, without regard to whether he also may have violated conflict of interest statutes or regulations. See National Service Corp., B-205629, July 26, 1982, 82-2 CPD ¶ 76; J.L. Associates, Inc., B-201331.2, Feb. 1, 1982, 82-1 CPD ¶ 99. The protester has the burden of affirmatively proving its case; unsupported allegations do not satisfy this burden, J.L. Associates, Inc., supra, nor is it sufficient to establish the mere potential for improprieties. Computer Services Corp., B-210800, Apr. 17, 1984, 84-1 CPD ¶ 422. In addition, we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See Architectural Preservation Consultants; Resource Analysts, Inc., B-200872, et al., Dec. 8, 1981, 81-2 CPD ¶ 446.

The protester has not satisfied its burden of proof on this issue. First, even assuming that the equipment specialist's list of LPTS requirements was based on Atlantic's equipment and eventually led to the issuance of a brand name or equal solicitation--a circumstance that is not necessarily objectionable, provided the result accurately reflects only the government's minimum needs, 44 Comp. Gen. 27 (1944)--there is no indication that the employee acted out of self-interest or other improper motive. There is no evidence that the employee arranged for, or even desired, employment with Atlantic prior to leaving the government, and the fact that he was subsequently hired by that firm is not, standing alone, sufficient to permit us to infer otherwise. Finally, there is nothing in the record to suggest that the equipment specialist assisted Atlantic with its proposal after leaving the government, much less that any such assistance would have been improper. In short, the protester has not met its burden of affirmatively proving that the employee's limited involvement here affected the integrity of the procurement.

B-215480

The protest is dismissed in part and denied in part.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel